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IN THE

Supreme Court of the United States

SINOCHEM INTERNATIONAL CO. LTD.,

Petitioner,

v.

MALAYSIA INTERNATIONAL SHIPPING CORPORATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In its opening brief, Sinochem showed that federal courts may make rulings on threshold, non-merits issues other than personal and subject-matter jurisdiction without running afoul of the bar on "hypothetical jurisdiction" first articulated in *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998), and explained since then in *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), *Kowalski v. Tesmer*, 543 U.S. 125 (2004), and *Tenet v. Doe*, 544 U.S. 1 (2005).

Since then, the United States has filed a brief agreeing with this position, for good and important reasons. The Seventh Circuit, too, has endorsed Sinochem's position: "[Judge Stapleton] maintained that jurisdiction is vital only if the court proposes to issue a judgment on the merits. *Ruhrgas* says as much, 526 U.S. at 584-85, though in dictum. . . . It seems to us the right approach; we expect *Sinochem* to turn *Ruhrgas*'s dictum into a holding." *Intec USA, LLC v. Engle*, 467 F.3d 1038, 1041 (7th Cir. 2006).

Against this array of contrary precedent and analysis, Respondent seeks an absolute rule that "jurisdiction" must be definitively adjudicated first in all cases, because jurisdiction "[g]ives a [c]ourt the [a]uthority to [r]ule on [m]erits and [n]on-[m]erits [i]ssues." Resp. Br. at 9. That proposed rule—at least the "and non-merits issues" part of it—is completely at odds with this Court's precedent, including all of this Court's post-*Steel Co.* precedent in this area. That, perhaps, is why Respondent fails to even cite, let alone reconcile, such cases as *Tenet*, *Kowalski*, *Vermont Agency of Natural Resources*, and *Ortiz*, as well as *Moor v. Alameda County*, 411 U.S. 693 (1973), *Ellis v. Dyson*, 421 U.S. 426 (1975), and *Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979), all cited by Sinochem.

The judgment of the Third Circuit should be reversed.

I. RESPONDENT'S ARGUMENTS IGNORE THIS COURT'S PRECEDENTS

1. In urging that a district court must conclusively establish jurisdiction before considering a *forum non conveniens* motion, Respondent entirely disregards the distinction *Steel Co.* and *Ruhrgas* drew between adjudication of merits issues prior to establishing jurisdiction, and dismissal of an action on threshold non-merits grounds. The Court has made abundantly clear that the bar on "hypothetical jurisdiction" refers only to "'assuming' jurisdiction for the purpose of deciding the merits." *Steel Co.*, 523 U.S. at 94. Thus, as Petitioner's opening brief (at 12-13) and the United States' Brief (at 11) have explained, the Court in so ruling reaffirmed its prior decisions in *Moor*, 411 U.S. at 715-16, where it approved the discretionary practice of declining to exercise pendent jurisdiction before ascertaining whether federal jurisdiction existed in the first place, and *Ellis*, 421 U.S. at 436, where the Court approved of courts abstaining under *Younger v. Harris*, 401 U.S. 37 (1971), before determining whether there was a "case or controversy." This Court recognized that these decisions, among others, "have diluted the absolute purity of the rule that Article III jurisdiction is always an antecedent question." *Steel Co.*, 523 U.S. at 101. Respondent, apparently unable to reconcile these cases with its absolutist position, cites neither *Moor* nor *Ellis*.

"It is hardly novel for a federal court to choose among threshold grounds for denying audience to a case on the merits." *Ruhrgas*, 526 U.S. at 585 (citing *Moor*, 411 U.S. at 715-16, and *Ellis*, 421 U.S. at 433-34). Thus, the Court of Appeals for the D.C. Circuit, in *In re Papandreou*, 139 F.3d 247 (D.C. Cir. 1998), held that "a court that dismisses on . . . non-merits grounds such as *forum non conveniens* and personal jurisdiction, before finding subject-matter jurisdiction, makes no assumption of law-declaring power that violates the separation of powers principles." *Id.* at 255. This Court approvingly quoted this language from

Papandreou in *Ruhrgas*, 526 U.S. at 584-85, but elided the "*forum non conveniens*" language since only personal jurisdiction, and not *forum non conveniens*, was at issue there. In light of *Ruhrgas*'s reliance on *Papandreou*, and its post-*Ruhrgas* reaffirmance by that court in *Hwang Geum Joo v. Japan*, 413 F.3d 45, 48 (D.C. Cir. 2005), *cert. denied*, 126 S. Ct. 1418 (2006), Respondent's brusque disapproval of *Papandreou* because it "was decided prior to . . . *Ruhrgas*" (Resp. Br. at 17, 21), is puzzling at best.

Similarly puzzling is Respondent's decision to ignore any decision rendered by this Court after *Ruhrgas*, including several cited in the opening brief. The only imaginable explanation for that tactic is that all of those decisions—including *Ortiz*, 527 U.S. 815, *Vt. Agency of Natural Resources*, 529 U.S. 765, *Kowalski*, 543 U.S. 125, and *Tenet*, 544 U.S. 1—contradict the inflexible, absolute rule that Respondent seeks. Since Respondent has chosen not to distinguish or even discuss those decisions, we will not repeat our (or the Solicitor General's) discussion of those decisions here, except to state the obvious: They demonstrate that Respondent's position is wrong, and that the Third Circuit erred. *See* Pet'r's Br. at 13-16; U.S. Br. at 10-12.

Finally, as noted above, the Seventh Circuit has now endorsed Sinochem's position: "[Judge Stapleton] maintained that jurisdiction is vital only if the court proposes to issue a judgment on the merits. *Ruhrgas* says as much, 526 U.S. at 584-85, though in dictum. . . . It seems to us the right approach; we expect *Sinochem* to turn *Ruhrgas*'s dictum into a holding." *Intec USA, LLC*, 467 F.3d at 1041.

2. In support of its position, Respondent relies on cases that are either helpful to Sinochem or are otherwise inapposite.

a. Respondent cites (at 10) *Employers Reinsurance Corp. v. Bryant*, 299 U.S. 374 (1937), for the proposition that "[n]either subject matter jurisdiction nor personal

jurisdiction may be lacking prior to a court proceeding to adjudicate a matter." That proposition is hardly novel, nor does it help Respondent. The Court in *Bryant* held that without personal jurisdiction, "the court is powerless to proceed to an *adjudication*." *Id.* at 382 (emphasis added). But, as Respondent then notes (at 10), this language was quoted favorably by the Court in *Ruhrgas*, 526 U.S. at 583-84, which went on to explain that the power of "adjudication" referred to in *Bryant* meant "[j]urisdiction *to resolve cases on the merits*," which "requires both . . . subject matter jurisdiction and . . . personal jurisdiction, so that the court's decision will bind [the parties]," *Ruhrgas*, 526 U.S. at 577 (emphasis added).

That is the critical distinction here. The "adjudication" that cannot occur without jurisdiction is "resolv[ing] cases on the merits." As so many decisions, including the post-*Ruhrgas* cases ignored by Respondent, hold, conclusively establishing jurisdiction is not a prerequisite for a court's ability "to act" on every issue other than jurisdiction. *See* Resp. Br. at 9. In fact, in *Bryant*, this Court held that because it was established that the district court had no personal jurisdiction over defendant in a removed case, the district court should have either remanded the case to a state court or dismissed the action. 299 U.S. at 381-82. Either action was within the court's discretion, and this Court agreed that remand was the "more appropriate of the alternatives." *Id.* at 382. Under Respondent's absolutist formulation of the rule, however, it is doubtful that the district court would have had the power to enter the "more appropriate" remand order.

b. Respondent's citations to broad statements in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947) ("the doctrine of *forum non conveniens* can never apply if there is absence of jurisdiction or mistake of venue"), and *Ex parte McCardle*, 74 U.S. 506, 514 (1868) ("Without jurisdiction the court may not proceed at all in any cause."), Resp. Br. at 8-10, are

unhelpful. Neither case came remotely close to addressing the question presented here.

As the Solicitor General has explained, *Gulf Oil*'s statement that "*forum non conveniens* can never apply if there is absence of jurisdiction" "is true enough when a court has already determined that jurisdiction or proper venue is lacking. At that point, there is no role for *forum non conveniens* to play." U.S. Br. at 18 (internal quotation marks omitted). But *Gulf Oil* did not answer the question of whether *forum non conveniens* can apply where jurisdiction is not necessarily "absen[t]," but just not conclusively determined. That is the question raised by this case. *See also* U.S. Br. at 18 ("the question presented [in *Gulf Oil*] was whether even a court that concededly *has* jurisdiction and is a proper venue could decline to exercise its jurisdiction on *forum non conveniens* grounds"). The "thoughtful analysis" recently offered by the district court for the Southern District of New York (Resp. Br. at 16 n.6) in *Turedi v. Coca-Cola*, __ F. Supp. 2d __, 2006 WL 3187156 (S.D.N.Y. Nov. 2, 2006), answers Respondent's absolutist position: "[T]he *Gilbert* Court's assumption that a court ruling on a *forum non conveniens* motion must have jurisdiction to do so makes no express pronouncement that the existence of jurisdiction must first be formally verified, or that the court's application of the doctrine must adhere to a prescribed decisional sequence following the disposition of any jurisdictional disputes. Nothing in *Gilbert* could be construed as explicitly enunciating such a rule." *Id.* at *8.[1]

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[1] In further support of its position, Respondent quotes language from the Wright & Miller treatise suggesting that *forum non conveniens* "does not come into play unless the court in which the action was brought has both subject matter and personal jurisdiction and is a proper venue." 15 CHARLES ALAN WRIGHT, *ET AL.*, FEDERAL PRACTICE & PROCEDURE § 3828 (2d ed. 1986). However, as the United States' Brief explains, "[n]otably, that treatise provides no analysis to support the assertion, and

So, too, *McCardle*'s statement that "[w]ithout jurisdiction the court may not proceed at all in any cause," is not inconsistent with a rule allowing *forum non conveniens* to be decided before jurisdiction is conclusively determined. A dismissal on *forum non conveniens* grounds at the outset of litigation has exactly the same effect as a dismissal for lack of jurisdiction—the court does not "proceed at all" within that cause, but dismisses the case without ever touching on the merits.

Respondent nonetheless reads these broad statements in *Gulf Oil* and *McCardle* without regard to subsequent developments, such as this Court's cases expressly allowing flexibility in determining which threshold non-merits ground is more efficient or appropriate for dismissing a case. Again, Respondent's argument suffers from its unwillingness to even cite, let alone attempt to reconcile, this Court's decisions in this area—such as *Moor*, 411 U.S. at 715-16; *Ellis*, 421 U.S. at 436; *Ortiz*, 527 U.S. at 831; *Vt. Agency of Natural Resources*, 529 U.S. at 779; *Kowalski*, 543 U.S. at 129 & n.2; and *Tenet*, 544 U.S. at 6 n.4.

Respondent's view is logically unsound. It is a commonplace that all federal courts have jurisdiction to determine their own jurisdiction. *United States v. Ruiz*, 536 U.S. 622, 628 (2002) ("[I]t is familiar law that a federal court

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no authority other than the language in *Gulf Oil*," which, as explained above, does not control this case. U.S. Br. at 19 n.6.

Furthermore, "[a]nother respected treatise concludes, to the contrary, that '[t]he Second and D.C. Circuits have the better view. Just as the Supreme Court rejected the view that subject matter jurisdiction must be decided first in favor of a more flexible rule, the Court is likely to reject the absolute view adopted by the [court of appeals] here.'" U.S. Br. at 19 & n.6 (quoting 17 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE § 111.90A, at 111-248.2-248.3 (3d ed. 2006)) (brackets in original, except first).

always has jurisdiction to determine its own jurisdiction."). So, too, it makes sense that a federal court likewise always has jurisdiction to decline that jurisdiction, whether the ground for declining jurisdiction lies in abstention doctrines (*see Ellis*, 421 U.S. at 436), other discretionary jurisdictional doctrines such as pendent jurisdiction (*see Moor*, 411 U.S. at 715-16), venue statutes (*see Leroy*, 443 U.S. at 180), or *forum non conveniens*. Just as the court can temporarily assume jurisdiction to ascertain whether jurisdiction exists, "the converse should also follow: that the courts should be able to exercise inherent authority as well to decline to inquire into their jurisdiction if, consistent with similar concerns about furthering justice and judicial economy, a more suitable and expeditious non-merits disposition is available." *Turedi*, 2006 WL 3187156, at *9; *see also id.* at *8 (*Gulf Oil*'s general statement does not control because "*forum non conveniens* derives from the courts' 'inherent power,' a source of jurisdiction that grants them discretion to decide their order of operations of discretionary questions") (citation omitted).[2]

3. Respondent agrees with Sinochem and the Third Circuit (but disagrees with the Fifth Circuit) that *forum non conveniens* is a "non-merits based" determination. Resp. Br. at 16-17. Yet Respondent does not come to grips with the consequence of that critical concession.

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[2] Respondent's position is at best inconsistent with respect to whether discretionary grounds for declining to exercise jurisdiction can be exercised before determining jurisdiction. At one point, Respondent agrees with Sinochem (*see* Pet'r's Br. at 17-21) that discretionary barriers to federal court may properly be decided before jurisdiction is decided: "Petitioner is correct that *Steel Co.* does not prohibit decisions on 'discretionary jurisdictional question[s].'" Resp. Br. at 14-15. But elsewhere in its brief, Respondent suggests a dichotomy between personal jurisdiction and *forum non conveniens*, because the former is "a question of law," but *forum non conveniens* "is not." Resp. Br. at 22-23.

a. Respondent agrees that a court may decide abstention or venue questions prior to conclusively establishing jurisdiction, Resp. Br. at 14-15, and, indeed, goes so far to say that "[i]t is entirely appropriate to rule on the venue matter" in a case removed to a federal court, "then allow the next court to deal with the issues of establishing jurisdiction." Resp. Br. at 15. But, as Sinochem explained in its opening brief (at 21-27), *forum non conveniens* is itself "a supervening venue provision," *American Dredging Co. v. Miller*, 510 U.S. 443, 453 (1994), and, even though better classified as a venue doctrine, it nonetheless "proceed[s] from a similar premise" as the abstention doctrines—that, "[i]n rare circumstances, federal courts can relinquish their jurisdiction in favor of another forum." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 722 (1996). Given that *forum non conveniens* is of the same essential nature as venue and abstention, Respondent's failure to reconcile its absolutist position with *Leroy* or *Moor*—let alone explain in any convincing way why the result here should be different than in those cases, which endorse deciding venue or abstention *before* deciding jurisdiction—should be fatal to its proposed rule.[3]

b. Respondent is wise to disagree with the Fifth Circuit's holding in *Dominguez-Cota v. Cooper Tire & Rubber Co.*, 396 F.3d 650 (5th Cir. 2005), that *forum non conveniens*

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[3] In fact, even prior to this Court's holding in *Leroy*, this Court held in *Goldlawr, Inc. v. Heiman*, 369 U.S. 463 (1962), that a district court may transfer a case to another venue pursuant to 28 U.S.C. § 1406(a), which authorizes a district court to transfer a case filed in an improper venue "if it be in the interest of justice," whether or not the transferor court has personal jurisdiction over the defendant. *Goldlawr*, 369 U.S. at 465 (internal quotation marks omitted). And, subsequent to *Goldlawr*, Congress enacted 28 U.S.C. § 1631, which explicitly conferred upon the courts authority to order a transfer of venue "in the interest of justice" in a case in which the court "finds that there is a want of jurisdiction." *See* U.S. Br. at 19-20 (internal quotation marks omitted).

does present a merits issue. As Sinochem showed in its opening brief (at 23-24 & n.5), this Court has observed in several cases that a *forum non conveniens* decision is not a ruling on the merits, since it does not bear on the substantive right to recover, *American Dredging*, 510 U.S. at 454; *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 150 (1988). And the Solicitor General has properly noted in the United States' brief (at 13-14) that a dismissal on *forum non conveniens* grounds has no claim-preclusive effect, not even on a later procedural ruling. U.S. Br. at 14 (quoting *Parsons v. Chesapeake & Ohio Ry.*, 375 U.S. 71, 73-74 (1963): "'[A] prior state court dismissal on the ground of *forum non conveniens* can never serve to divest a federal district judge of the discretionary power vested in him by Congress to rule upon a motion to transfer under § 1404(a).'").

In sum, *forum non conveniens* is a non-merits ground for dismissal that may be considered at the outset of a case.

II. RESPONDENT'S ARGUMENTS DO NOT RESPECT JUDICIAL ECONOMY, INTERNATIONAL COMITY, OR CONSTITUTIONAL AVOIDANCE

As Sinochem showed in its opening brief (at 27-36), *forum non conveniens* is particularly apt for consideration at the outset of a case based on considerations of efficiency, international comity and constitutional avoidance. The United States agrees. U.S. Br. at 25-30.

1. Disagreeing with Sinochem and the United States, Respondent contends (albeit admittedly without any statistical evidence) that because cases involving *forum non conveniens* motions "represent only a very small fraction of the cases on the federal court dockets," Resp. Br. at 24, courts would not have to devote significant additional resources to adjudicate jurisdiction before even considering *forum non conveniens* motions. Respondent misunderstands the proper inquiry, which should focus not on the number of cases where *forum non conveniens* is at issue, but what the

effective method of adjudicating this issue should be within the class of cases where *forum non conveniens* motions *are* brought. And in all events, in view of the proliferation of foreign litigation in the U.S. courts (Pet. at 22; Pet'r's Br. at 32), there is good reason to doubt Respondent's unsupported speculation that *forum non conveniens* implicates "only a very small fraction of the cases on the federal court dockets."

2. Respondent claims that consideration of the factors involved in deciding a *forum non conveniens* motion is "extensive and time consuming." Resp. Br. at 23. One need look no further than the docket in this case to see that this is not so: The district court was able to resolve the *forum non conveniens* question without the need for anything beyond briefing—a very efficient, and proper, way of disposing of this case.

Respondent seeks to make the case that other discretionary reasons for denying a federal-court audience to a case, such as improper venue, abstention, and "other bases raised by Petitioner" (Resp. Br. at 15), are appropriately addressed first, but that *forum non conveniens* is not. But Respondent offers no analysis to support a special treatment for *forum non conveniens*. And, indeed, in these other areas, which are highly analogous to *forum non conveniens* in meaningful ways, the Court's decisions only support Sinochem's position, not Respondent's. As the Solicitor General has explained in the case of pendent-claim jurisdiction (now codified as supplemental jurisdiction, *see* 28 U.S.C. § 1367), "in deciding whether to exercise jurisdiction over pendent state law claims, a court must assess factors similar to those considered in conducting a *forum non conveniens* analysis—*i.e.*, 'judicial economy, convenience and fairness to litigants'—that require it to make determinations regarding the complexity and predominance of the state claims at issue." U.S. Br. at 16 (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)). Indeed, this Court's explanation in *Gibbs* of the function of the pendent-jurisdiction doctrine, itself "a

doctrine of discretion," is equally applicable to *forum non conveniens*: "Its justification lies in considerations of judicial economy, convenience and fairness to litigants." 383 U.S. at 726. Thus, it is highly relevant that this Court has endorsed the federal courts' power to decline pendent jurisdiction over state-law claims before decisively ascertaining whether a court has jurisdiction over those claims at all. *See Ruhrgas*, 526 U.S. at 585 (citing *Moor*, 411 U.S. 693); *see also* U.S. Br. at 16.

3. Respondent's efficiency concerns are premised on unusual hypothetical factual settings that are more appropriately dealt with in individual cases, not by virtue of a rule that deprives federal courts of the power to consider *forum non conveniens* motions at the outset in all cases.

a. Respondent fears that judicial economy would not be furthered if a court addresses *forum non conveniens* first, determines that a *forum non conveniens* dismissal is inappropriate, but ultimately finds that there is no jurisdiction. Resp. Br. at 14. In support, Respondent cites only a single example, the recent decision in *Intec*, where the Seventh Circuit went through the jurisdictional determination in addition to addressing *forum non conveniens*. But the very reason the *Intec* court felt obliged to perform both inquiries was because this Court has yet to definitively resolve the sequencing issue presented here. 467 F.3d at 1041 ("But to avoid the need for further proceedings should the Supreme Court affirm in *Sinochem*, we turn to subject-matter jurisdiction."). As noted above, the Seventh Circuit endorsed Sinochem's position in this case, not Respondent's proposed rule, *id.*, and if Sinochem's argument prevails here, courts faced with the same quandary as the *Intec* court will not have to go through both sets of analyses in the future.

b. Respondent's suggestion that adjudication of personal jurisdiction is more "direct, and the courts have leeway in deciding such a motion," whereas *forum non conveniens*

motions are "wasteful to the resources of the parties, and not just to a court," Resp. Br. 25, is again belied by this very case.

In seeking to advance this contention, Respondent attempts to make the *forum non conveniens* determination sound complex by referring to "affidavits from six different countries," *id.*, that Sinochem submitted to the district court here. What Respondent does not disclose, however, is that those affidavits—actually, declarations—were not inherently necessary to the *forum non conveniens* inquiry, but needed only to refute Respondent's assertion, made in its district-court briefing, that Chinese procedural laws on discovery are inferior to U.S. law. Nor does Respondent disclose that five of those six declarations were only one to one-and-a-half pages long, or that each merely set forth, pursuant to FED. R. CIV. P. 44.1, the content of the procedural laws of a variety of European nations demonstrating that those nations provide for significantly less opportunity for discovery than do Chinese court rules, yet that United States courts routinely extend comity to decisions of the courts of these European countries. Only one of those declarations, from Sinochem's Chinese admiralty lawyer Lu Min, was longer— five pages—and it addressed the relevant Chinese judicial procedures. *See* J.A. 10 (C.A. App. 119a-134a).[4]

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[4] Lu Min also submitted another declaration in response to MISC's motion for reconsideration covering these points in further detail, as well as addressing the Chinese High Court's ruling that had issued by the time of that briefing. C.A. App. 166a-170a. The total number of pages of Sinochem-offered declarations, all on foreign-court procedures, is 22 pages, including Lu Min's original declaration (C.A. App. 45a-48a) covering the procedural history of the Chinese action and touching, but only briefly, on Chinese admiralty court competence to hear such cases generally (C.A. App. 48a).

The district court ultimately concluded, based on other evidence furnished by declaration, that "while there seems to be some disagreement as to the extent of Chinese discovery and evidentiary

In any event, the district court did not find adjudication of *forum non conveniens* to be more complicated than the question of personal jurisdiction—the district court would have required further discovery, briefing, and perhaps even testimony to ascertain personal jurisdiction, whereas it was able to dismiss the case on *forum non conveniens* grounds without more than briefs and affidavits. *See* Pet. App. 60a, 67a.

c. In the end, Respondent's arguments about efficiency are better addressed not by a hard and fast rule prohibiting the consideration of a *forum non conveniens* motion before a conclusive determination of jurisdiction, but by the rule that Sinochem has proposed. There indeed may be cases where the personal-jurisdiction or subject-matter-jurisdiction inquiry is best decided first. But there also will be cases like this one, where it is plain that *forum non conveniens* is the better threshold inquiry. Sinochem's proposed rule leaves that determination up to the district court, which is best able to determine whether *forum non conveniens* presents a simple and cost-effective way of disposing of a case at the outset. The question here is not, as Respondent has redrafted it, "[w]hether a district court *should* establish jurisdiction before dismissing a suit on grounds of *forum non conveniens*" (Resp. Br. at i) (emphasis added); the only question for this Court is whether a district court has that power in the first place.

3. Respondent's international-comity arguments are curious, to say the least. Respondent equates international comity with "expect[ing] our own courts to undertake at least the level of work we are asking other courts to perform." Resp. Br. at 24. That is not comity at all. That is a recipe for

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practice relative to that in the United States, the Chinese system appears to have competent and orderly practice and procedure capably of justly addressing matters involving foreign entities." Pet. App. 68a n.11.

requiring dual-track litigation in the U.S. and in the foreign country, which is not only inefficient, but disrespectful of the foreign country—and it risks inconsistent judgments as well. Comity means deference and solicitude, not dueling court proceedings. *See, e.g., Am. Dredging Co.*, 510 U.S. at 464-67; *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981); *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 131-35 (2005); Pet'r's Br. at 29-31.

As the Solicitor General has observed, the doctrine of *forum non conveniens* has the salutary benefit of allowing dismissal "without deciding difficult questions of jurisdiction, which often can turn on questions which could be very sensitive to the foreign government whose conduct is at issue." U.S. Br. at 2; *see also id.* at 30 n.13 (Respondent's rule "would deny courts the flexibility necessary to deal with cases that . . . present foreign affairs concerns."); *id.* at 27-30 (listing examples where a *forum non conveniens* dismissal would have avoided the resolution of issues with "sensitive foreign relations ramifications"). In fact, the Solicitor General has emphasized that the United States, in litigating abroad, also relies on *forum non conveniens* to obtain dismissals, and that adopting Respondent's position "could have an adverse impact on the United States when it raises that or similar non-merits grounds for dismissal in foreign litigation." U.S. Br. at 2. *See also Intec USA*, 467 F.3d at 1040 (respect for comity means that "[a]s a nation whose policy favors free international trade, the United States must be prepared *to trust* the judiciary of our partners, unless there are grounds to doubt the competence or honesty of the foreign judicial system") (emphasis added); Pet. App. 67a n.11 (the district court in this case expressed its "confiden[ce] that the Chinese Admiralty Court can competently and justly handle this matter").

4. Finally, Respondent has no response to Sinochem's showing that the principle of constitutional avoidance is best served by dismissing a case on *forum non conveniens* grounds rather than engaging in a difficult jurisdictional

analysis that may force the court to "decide a question of constitutional law that it has not heretofore decided," such as the unique due process questions that so frequently arise where personal jurisdiction under state long-arm statutes is asserted. *Leroy*, 443 U.S. at 181; *see* Pet'r's Br. at 33-36; U.S. Br. at 27. Where those difficult constitutional questions arise, as in *Leroy* and this case, *forum non conveniens* provides a practical, alternative, non-constitutional, and non-merits ground for decision. As with so many of Sinochem's (and the Solicitor General's) showings, Respondent's answer is a deafening, and telling, silence.

CONCLUSION

The judgment of the Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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